APPENDIX "A."

Opinion of the Court of Appeal.

In the Court of Appeal of the State of California, Second Appellate District, Division Five.

Harold J. Powers, Director of the Department of Professional and Vocational Standards, etc., Plaintiff and Appellant v. Sydney N. Floersheim, et al., Defendants and Respondents.

Harold J. Powers, Director of the Department of Professional and Vocational Standards, etc., Plaintiff and Respondent v. Sydney N. Floersheim, et al., Defendants and Appellants. Civ. No. 29934.

Filed: Nov. 21, 1967.

APPEAL from a judgment of the Superior Court of Los Angeles County. Alfred Gitelson, Judge. Affirmed in part; reversed in part.

Murray M. Chotiner for Defendants-Appellants-Respondents. Thomas C. Lynch, Attorney General, and Warren H. Deering, Deputy Attorney General, for Plaintiff-Appellant-Respondent.

Plaintiff Harold J. Powers, as Director of the Department of Professional and Vocational Standards of the State of California, brought suit against defendants Sydney N. Floersheim (also known as S. Floersheim and as Sydney Floersheim), Elaine A. Floersheim, Paul Price (also known as Paul Pink), Maxine Pink, Herman Winters, and Ralph Schneider. The complaint alleges that none of the defendants is licensed as a collection agency, as required by Business and Professions Code section 6853, and that they are in violation of section 6870 of that code. Injunctive

relief is sought to restrain defendants from engaging in business as a collection agency until they are licensed to do so, pursuant to the Collection Agency Act. (Bus. & Prof. Code, Sec. 6850 et seq.)[1] The two pertinent sections around which this case developed are sections 6852[2] and 6853.[3]

Plaintiff contends that the sale of certain forms by the defendant, both alone and in connection with certain mailing and forwarding services rendered, constituted the business of a collection agency for which defendants were required to obtain a collection agency license, but did not. Defendants consented to a limited injunction against the rendition of certain addressing services, but otherwise defendants resisted plaintiff's action. Defendants counterclaimed for declaratory relief and for injunctive relief against official harassment of their customers and interference with their business.

During the early course of the trial, defendants filed with the court a written consent to a permanent injunction in regard to some of their activities, as follows:

> "Defendants consent to a permanent injunction prohibiting them from, directly or indirectly, or

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[1]All section references herein are to the Business and Professions Code unless otherwise indicated.

[2]Sec. 6852: " 'Collection agency' means and includes all persons engaging, directly or indirectly and as a primary or secondary object, business, or pursuit, in soliciting claims for collection or in the collection of claims owed or due or asserted to be owed or due to another."

[3]Sec. 6853: "Any person using a fictitious name in collecting its own claims with the intention of conveying to the debtor that a third party has been employed and any person, who sells, or offers to sell, forms represented to be a collection system, scheme, or device, intended or calculated to be used to collect claims is a collection agency and is subject to the provisions of this chapter."

by any manner or means whatsoever: Soliciting creditors to send unto the defendants or any other persons, any names, addresses, and amounts owing or claimed to be owing to such creditor by a debtor for the defendants to fill in the blanks on forms supplied theretofore or thereafter with the amount of the claim, the creditor's name and address, the name and address of the debtor, and then inserting the completed form in an envelope with the debtor's name and address appearing through the window thereof and sealing the said envelopes; all or any part of the foregoing being done for a fee or charge or sum, other than as an employee of such creditor, paid by the creditor to the persons, or any thereof, enjoined."

The trial court entered detailed findings of fact and conclusions of law and then decreed that the forms sold by defendants, with certain services included as part of the purchase, together comprised a collection system, scheme, and device within the meaning of section 6853, and thus defendants are subject to the provisions of the Collection Agency Act and are required to be licensed thereunder. With the conclusion that defendants sold and offered for sale forms which they represented to be collection systems, schemes, and devices, we agree. The court stated that defendants would not be subject to the licensing requirements if no services were offered as part of the sale of forms. With this we do not agree. The court further enjoined defendants from using certain forms which the court found objectionable due to the use of fictious names thereon as found by the court. We do not find it necessary to limit the injunction, though we concur in this specific finding of objectionable practice.

On the counterclaim, the court found that plaintiff had warned defendants' customers not to use forms sold by defendants, and threatened such customers with disciplinary proceedings, with the result that such customers refused to order or use forms supplied by defendants, or to pay defendants for forms already purchased from them. The court enjoined plaintiff from taking or threatening to take any action against defendants or any other person by reason only of the mere fact of the sale, purchase, or use of defendants' forms which do not violate other provisions of the injunction or of law.

Facts

Defendant Sidney Floersheim owns the S. Floersheim Sales Company located at 7319 Beverly Boulevard, Los Angeles, which as of the time of the trial (February 1964) had been inactive for three or four years. Defendant Elaine Floersheim, the wife of Floersheim, owns the Floersheim Sales Company, also located in the same offices at 7319 Beverly Boulevard, Los Angeles. She also owns the National Research Company, the business address of which is 748 Washington Building, Washington, D.C. Mail for the National Research Company is also accepted at 7319 Beverly Boulevard, Los Angeles. Defendants Paul Price (also known as Paul Pink), Herman Winters, and Ralph Schneider are salesmen of Floersheim Sales Company. Maxine Pink is a part time clerical worker for Floersheim Sales Company.

Defendant Elaine Floersheim does not take an active interest in the affairs of National Research Company. The affairs of that company are managed by a manager in Washington, D.C., under the supervision of Sid-

ney Floersheim in Los Angeles. S. Floersheim does not own any interest in this company, but does oversee the company and determines who will be employed. National Research Company engages only in the business of servicing the forms hereinafter mentioned, and does not render services to any business other than Floersheim Sales Company. "Payment Demand," "Claimant's Information Questionnaire," and "Current Employment Records" are names used by National Research Company to receive mail at its Washington, D.C. address.

Floersheim Sales Company is the sales agent for, and receives compensation from, National Research Company. S. Floersheim is the manager of Floersheim Sales Company. While Floersheim Sales Company is engaged in the sale of forms, it is not engaged in any type of printing business, except that on the various forms it sells, the company does print the numbers thereon and inserts certain information thereon, depending upon the states into which the forms will be sent.

None of the defendants is licensed as a collection agency. Until enjoined, defendants were engaged in the sale to merchants and other businesses in this state of certain printed forms which they represent would "collect" delinquent obligations from debtors in this state.

Summarized in brief, the forms sold were mainly of two types: "payment demand" forms and "skip tracing" forms. The former are primarily designed to collect delinquent accounts, and the latter are designed to locate the delinquent debtor and his assets so that a demand can be made upon him.

In conjunction with the sale of forms, defendants performed certain services for the creditor. After purchasing the forms, the purchaser fills in the name and address of the debtor and then forwards the forms in bulk to the National Research Company in Washington, D.C., which will then seal and meter the envelopes and mail them to the debtors. The various customers pay the costs of this postage. The forms, under names such as "Payment Demand" and "Current Employment Records," bear defendants' return address of "748 Washington Building, Washington, D.C."; or they may bear the return address alone. All returned forms are sorted and returned to the individual creditors.

Defendants or their agents mailed to various creditors within the state brochures describing their forms and the services rendered. These brochures explained the effectiveness of the forms and services in collecting delinquent debts.

Defendants on appeal raise four claimed errors committed by the trial court: (1) that the question of whether defendants' operations require a collection agency license has been decided against plaintiff by the prior judgment in *People ex rel. Mosk v. National Research Co. of Cal.*, 201 Cal.App.2d 765, which is res judicata; (2) that section 6853 is invalid, being in contravention of the entitling requirements of the state Constitution; (3) that the defendants' rendition of incidental mailing and forwarding services in connection with the sale of forms does not extend the coverage of section 6853, which the trial court found to be inapplicable to the mere sale of forms if validly construed; and (4) that the use of the particular forms which the trial court found objectionable does not render section 6853 applicable to defendants' operations.

Plaintiff in his appeal raises two claimed errors: (a) the court's judgment permits defendants to sell, and creditors to use, a system or scheme of collection forms in this state directly in violation of section 6853; and (b) the court's injunctive order against the Director prevents the Director from carrying out his statutory duty as to (1) the enforcement of sections 6852, 6853, and 6870 dealing with unlicensed collection agencies; (2) the enforcement of section 6947 and the regulations thereunder, which prohibit licensed collection agencies from using certain types of forms and letters and from engaging in unfair, misleading practices or illegal means of collection; and (3) the institution of disciplinary action, pursuant to section 6930, against licensed collection agencies for violation of section 6947 and the regulations thereunder.

Collateral Estoppel

Defendants contend that a prior suit[4] between the state and the defendants conclusively decided that the defendants' operations do not require a collection agency license. In the prior action, an injunction was granted against National Research Company for certain deceptive practices, but the court concluded "that the plaintiff is not entitled to an injunction based on the failure of the defendants to be licensed as . . . a collection agency."

The aspect of the res judicata doctrine which defendants invoke is collateral estoppel. Where an issue of fact essential to the judgment is actually litigated and necessarily decided by a valid final judgment, the

[4]*People ex rel. Mosk v. National Research Co. of Cal.*, 201 Cal. App. 2d 765 (No. 118,574 of the Superior Court of the State of California, for the County of Sacramento).

determination is conclusive between the parties and their privies. (*Cromwell v. County of Sac* (1876) 94 US 351; *Todhunter v. Smith* (1934) 219 Cal. 690, 694-95.) Collateral estoppel is not applicable to the decision of a mixed question of fact and law, particularly if there has been an intervening change in the law or a doctrinal change. (*Commissioner v. Sunnen* (1947) 333 US 591, 600-601.) The prior action upon which defendants rely to support their res judicata claim was an action brought by the state against the defendants to restrain defendants from allegedly violating the Collection Agency Act. The statute under which the action was brought was substantially changed after the former action concluded. Section 6872,[5] upon which the present action was based, was added in 1961 to the Business and Professions Code. The 1961 statute eliminated the requirements of the former law that the state must allege and prove irreparable injury and lack of an adequate legal remedy as a condition of relief.

The question whether the defendants fall within the present statute was neither litigated nor decided in the prior case. The issues decided in that case are not identical to the issues presented in this case. The applicabil-

[5]Sec. 6872: "The superior court in and for the county wherein any person carries on, or attempts to carry on, business as a collection agency without first having obtained a license pursuant to this chapter, or carries on such business after the revocation or expiration of any license or during the period of suspension of any license, may, on application of the director, issue an injunction or other appropriate order restraining such conduct.

"The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that no undertaking shall be required and the director shall not be required to allege facts necessary to show or tending to show lack of an adequate remedy at law or irreparable injury (Added by Stats. 1961 ch 1403, Sec. 1)"

ity of the former collection agency law to defendants in the prior litigation presented a mixed question of fact and law. A prior determination of such a question does not collaterally estop the state from litigating the same question in the new setting following a change in the applicable law.

The trial court correctly concluded that the prior action did not collaterally estop litigation of this issue in this case.

Constitutional Requirements As To Entitling

In Conclusions of Law, paragraph VI, the trial court found that neither defendants' selling nor offering to sell, printing or causing to be printed, nor composing or causing to be composed, the forms herein involved, or similar forms, was within the subject of the Collection Agency Act. The court concluded, rather, that it was the selling of the forms and, as a part of the sale, agreeing to and performing the mail forwarding and addressing services, as found by the court, which together brought defendants' activities within the Collection Agency Act.

Defendants urge that the selling of forms and the providing of addressing and forwarding services are not within the "natural and obvious" meaning of the words "collection agency," and thus the inclusion of these acts within the purview of the statute is in violation of article IV, section 9,[6] of the state Constitution.

[6]Cal. Const., art. IV, sec. 9: "A statute shall embrace but one subject, which shall be expressed in its title. If a statute embraces a subject not expressed in its title, only the part not expressed is void . . ." (Adopted Nov. 8, 1966; formerly art. IV, sec. 24.)

When a title specifically shows that within the act the basic terms will be defined, it is considered to be broad or comprehensive in nature and liberally interpreted as long as some rational unity exists between the general subject matter and the title. Such is not the case where a title gives no indication that basic terms will be defined. In this latter case, the title is said to be narrow in scope and will be more closely construed. In the titles involved in the present case, it is clear that in 1941, when section 6853 was added, the reference in the title to the 1927 title[7] showed that the basic terms would be defined within the body of the act. In 1943, when the act was transferred to the Business and Professions Code, the title demonstrated that the "law regulating and licensing collection agencies" was being added to the code in substantially its then present form. The part under discussion here was not amended by the 1943 act.

The heading of the 1927 act, which was referred to in the heading of each amendment, was sufficiently clear to advise that the term "collection agency" would be given a new and broad definition in the body of the act. Defendants have in no way shown any prejudice resulting from the titles of the acts in question. The type of activity which section 6853 seeks to regulate is not so foreign from the business of a collection agency (as defendants would have us believe) that it cannot be said that its inclusion within the act contravenes the entitling requirements set forth in article IV, section 9. (See *Metropolitan Water Dist. v. Marquardt*,

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[7]"An Act to define collection agencies; to provide for the regulation, bonding, supervision and licensing thereof; to provide for the enforcement of said act and penalties for the violation thereof."

59 Cal.2d 159; Cf. *Petroleum Lease Properties Co. v. Huse,* 195 Wash. 254 (80 P.2d 774) and *DeCano v. State,* 7 Wash.2d 613 (110 P.2d 627) (illustrations of narrow titles) with *State v. Department of Public Service,* 1 Wash.2d 102 (95 P.2d 1007) (illustration of broad title).)

Coverage of Sections 6852 and 6853

Sections 6852 and 6853 define those activities that bring a person within the definition of "collecting agency" for purposes of the statutory framework. Section 6852 is in two parts. The first covers those who solicit claims to collect, and the second covers those who actually do collect the claims of another. The services rendered in connection with the forms sold may well have brought the defendants within the group covered by this second portion of the section. This determination, however, is not necessary to resolve the issue before us.

Section 6853 is similarly divided into two parts. The first part deals with those using a fictitious name in the collection of their own debt, and is not involved in the case before us. The second part deals with those selling forms represented to be a collection system, scheme, or device used to collect claims. It is the coverage of this second part which presents the greatest difficulty.

The trial court felt that a literal reading of the section would bring defendants within its bounds.[8] With this we agree. But it also felt that such a reading

[8]"II. None of the provisions of the Collection Agency Act (Business and Professions Code, Section 6850 to 6956) are applicable to the cause here involved other than a literal reading of Section 6853."

would present grave constitutional problems.[9] With this we do not agree. Once the constitutional difficulties are met, then, it is our role to apply the statute as written. If the coverage seems broader than necessary or desirable, this is a problem that is more properly addressed to the Legislature. We turn our attention, then, to the constitutional points raised.

It is first contended that spreading the act to mere sellers of forms used in collecting debts would infringe upon freedom of speech. No opinion, thought expression, or other form of information is contained in the forms under discussion. They are merely tools of a trade, much as a hammer is a tool of the trade of carpentry. The purchaser seeks no information from the form, and the designer seeks to convey none. Assuming arguendo that forms may be construed to be a form of speech, business in the field of the communication of ideas may still be regulated in a reasonable manner. (*Weaver v. Jordan* (1966) 64 Cal.2d 235, 246-7.) In *National Broadcasting Co. v. United States,* 319 US 190, the United States Supreme Court upheld the power of the federal government to require that broadcasters be licensed and that such a license could

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[9]"VII. If Section 6853 of the Business and Professions Code be construed to require a person who sells or offers to sell Forms without offering, or agreeing to perform or performing any services whatsoever in connection therewith; said Forms collectively in a group, constituting a set plan of operation or procedures ('system'), or a systematic plan or program ('scheme'), or a method or project ('device') intended or calculated to be used by *bona fide* creditors to attempt to collect the debts owing unto them from their debtors to be licensed under the Collection Agency Act, would render said Section void and unconstitutional, as in contravention of the rights of Defendants under the First and Fourteenth Amendments to the Constitution of the United States, and Article I, Sections 1 and 9 of the California Constitution."

be denied because of certain behavior on the part of the applicant. In *Hirsh v. City and County of San Francisco* (1956) 143 Cal.App.2d 313, the court of appeal upheld business regulations because they were reasonable, although the business involved elements of public expression. In so doing, they applied principles set out in *In re Porterfield* (1946) 28 Cal.2d 91, a case striking down certain regulations of union organizers because of the high value of the speech involved, but which recognized that regulation could be valid though a balancing test must be taken into account weighing the value of the speech involved. Applying the balancing test to the instant case, we conclude the licensing provision must be upheld since we see no communicative value in the kind of forms involved.

It is contended that defendants' prosecution denied them equal protection of the laws. We recognize that uneven enforcement of the laws can be a denial of equal protection. (*Yick Wo v. Hopkins,* 118 US 356.) Generally, such unequal enforcement must be accompanied by a malicious intent on the part of the prosecution before it constitutes a denial of equal protection (*Snowden v. Hughes* (1944) 321 US 1, 8), rather than just enforcement against those parties who pose the largest threat to the state, or enforcement that is the most efficient means of enforcing the law, given the limited resources of the state agency (*Oyler v. Boles* (1962) 368 US 448, 456). A denial of equal protection involves the unequal treatment of persons equally situated. In the instant case, there has been no showing that there were others involved in the designing and selling of such forms as their primary business who have not been prosecuted. Nor has there been showing of administrative bias against these defend-

ants. Assuming for the moment that stationery stores were covered by the act, certainly a stationery store whose dealings in such forms is minimal does not pose an "equal threat" to the interest to which the state seeks control. We find no merit in the contention that these defendants have been denied equal protection. (See *People v. Gray*, 245 Cal.App.2d .....*)

The Injunction Against Defendants

It is contended that requiring defendants to obtain a license is an unreasonable interference with their right to conduct a legitimate business. Economic regulation will not be interfered with unless there is *no* reasonable basis for its promulgation. (*Doyle v. Board of Barber Examiners* (1963) 219 Cal. App. 2d 504; *Hope v. Contractors' etc. Board* (1964) 228 Cal.App.2d 414.) The defendants in the instant case vigoriously promoted their forms in a manner that intimately involved them in the debt collection process of large companies. The Legislature has manifested a clear intent to closely scrutinize those in such activity. The Legislature has concluded that debt collection is a fertile field for the attraction of elements whose effectiveness comes from an overzealous use of coercion, and that persons entering this field are to be screened because of this risk. That this is a reasonable and continuing area where such control is needed, see generally "Report of the Senate Interim Committee on Collection Agencies, Private Detectives and Debt Liquidators (1957)," particularly with reference to abuses that come from forms (pp. 35-38, 40-41). The California Supreme Court has upheld licensing requirements in the small-loans field, an area which presents the potential for many of the

*254 A.C.A. 289

abuses that are present in the collection field. (*In re Fuller* (1940) 15 Cal.2d 425, 431.) We do not intend to impugn defendants' moral character by recognizing that they are dealing in an area which the state feels may attract undesirable elements and therefore require a person entering that field to procure a license.[10]

The question then is whether these defendants "represented" their forms to be a "collection system, scheme, or device." There is no question but that defendants successfully sought to sell their forms by extolling their effectiveness. There can be no question but that they were intimately involved in the debt collection business within the area of their activity; the defendants being thus intimately involved, it seems equally clear that the legislative intent was to cover them. There seems to us little question but that the factors that make these forms a "system, scheme, or device" were actively brought to the attention of potential customers in the promotional activities of defendants sales representatives. A statement by defendant S. Floersheim and received in evidence is typical: he said, to one S. L. McClary, that when a debtor sees the envelope from Washington, D.C., "That makes the difference because this is a foreign name to them. Do you follow what I mean? Now they open it. Now they read it. Now it's no longer coming directly from the creditor, meaning you, it's coming from somebody else saying now get in and pay it. This is why it works—the power of the third party." There was the required representation that these forms were effective because of elements that added pressure to pay or supply information over and above that which would come from a normal bill or information-request for a creditor. The

[10]Nowhere is there a claim that the license fee is excessive.

consequence is that defendants acted as a collection agency as it is defined by the second portion of section 6853.

The trial court only enjoined the defendants from the use of various of its forms that gave the appearance of emanating from a third party. The trial court enjoined defendants from providing services as a part of its package-sale of forms. The state is entitled to a broader injunction, one that enjoins these defendants from further sales of, or offering for sale, forms which they represent to be a "collection system, scheme, or device" (or portion thereof) without being validly licensed. To the extent that the trial court's order enjoins defendants from performing certain services in conjunction with sales of forms, and to the extent that it prevents the sale of forms suggesting the involvement of a third party, all as part of a "collection system, scheme, or device," the order is proper. In addition thereto, the plaintiff is entitled to an injunction restraining defendants from further offering for sale or sale of forms, with or without services of defendant, which forms are represented by defendants to be a "collection system, scheme, or device," which includes all the forms involved in this case, until they are duly licensed as a collection agency.

The case is remanded to the Superior Court with directions to deny relief to defendants on their counterclaim, and to issue an injunction against defendants in conformity with this opinion.

Stephens, *J.*

We concur:

Kaus, *P. J.*

Hufstedler, *J.*

APPENDIX "B."

Original Judgment.

Superior Court of the State of California, for the County of Los Angeles.

Harold J. Powers, Director of the Department of Professional and Vocational Standards of the State of California, Plaintiff, vs. Sydney N. Floersheim a/k/a S. Floersheim and as S. N. Floersheim; Elaine A. Floersheim; Paul Pink; Maxine Pink; Herman Winters; and Ralph Schneider, Defendants. No. 826 756.

BE IT REMEMBERED:

The above-entitled cause came on duly and regularly for trial on February 18, 1964, in Department 19, of this Court, Alfred Gitelson, Judge Presiding, without a jury, a jury having been duly and regularly waived, and was heard on said day, and on the 19th, 20th, 21st, 24th and 25th of February, 1964.

Plaintiff, (sometimes hereinafter designated as Bureau) appeared by Stanley Mosk, then Attorney General of the State of California, Warren H. Deering, Deputy Attorney General, Clara Kauffman, Deputy Attorney General, by Clara Kauffman and Warren H. Deering, their counsel.

Defendants appeared in person and by Murray M. Chotiner, their Counsel.

The case was tried upon: The "Complaint for Injunction" (filed October 10, 1963); the "Amendment to Complaint" (filed February 18, 1964), it having been stipulated: "That the 'Answer' of Defendant then on file should constitute the 'Answer' thereto," though the allegations of said "Amendment to Complaint" were

in fact admitted by Defendants (Minute Orders February 18, 1964; August 11, 1964); the "Answer of Sydney N. Floersheim, also known as S. Floersheim and S. N. Floersheim, Sydney N. Floersheim doing business under the fictitious firm name of S. Floersheim Sales Co., Elaine A. Floersheim, Elaine A. Floersheim, doing business under the fictitious firm names of Floersheim Sales Company and National Research Company, Paul Pink, Maxine Pink, Herman Winters, and Ralph Schneider" (filed November 20, 1963); "Amendment to Answer to Complaint (Counter Claim)" (filed February 25, 1964); and the "Second Amendment to Answer to Complaint" (filed February 25, 1964).

It having been stipulated that "Pretrial Conference Waived" (Minute Order, January 7, 1964); it was so Ordered and Pretrial Conference was waived.

Evidence both oral and documentary having been received; Points and Authorities filed; Argument heard; all by the Court considered; and the Court having made and filed its Minute Order for Judgment (June 30, 1964), and being advised in the premises, made and filed its Findings of Fact and Conclusions of Law constituting the Decision of the Court, in accordance therewith, it is now

ORDERED, ADJUDGED AND DECREED:

I. Plaintiff is authorized under Section 6872 of the Business and Professions Code to institute action to enjoin persons from carrying on, or attempting to carry on, the business of a Collection Agency without first having obtained a License pursuant to the Collection Agency Act (Business and Professions Code, Division 3, Chapter 8, Sections 6850-6956.1).

II. The selling and offering to sell, the Forms, herein-involved, and as a part of the purchase thereof the services hereinbefore Found, constitute a Collection System, Scheme and Device intended and calculated to be used to collect claims within the meaning of Business and Professions Code, Section 6853.

That Defendants, other than the Defendant Maxine Pink, being engaged in said business, to wit: The sale and offering to sell said Forms with said services, having as a primary or secondary objective the assistance and participation by the Defendants in the collection of claims owed or due or asserted to be owed or due to another, are subject to the provisions of Chapter 8, Division 3, Collection Agency Act of the State of California; and so long as said Defendants as a part of the sale and offering for sale of said Forms offer and agree to, and do perform the services Found, they are subject to the provisions of, and required to be licensed under the said Collection Agency Act.

III. That unless and until Defendants be licensed as a Collection Agency, pursuant to said Collection Agency Act, none of said Defendants may sell or offer for sale the said Forms and as a part of such sale offer, agree to and perform the services hereinbefore Found.

IV. Neither the composing or causing to be composed, nor the printing or causing to be printed, nor the sale or offering to sell Forms thereof, said Forms collectively constitute a set plan of operation or procedures ("system"), or a systematic plan or program ("scheme"), or a method or project ("device") intending and calculated to be used by the Buyers thereof to collect claims and debts owing to them by debtors, no services being offered or agreed to be performed by

the Sellers of said Forms, is within or subject to the said Collection Agency Act; and Defendants in selling or offering to sell only such Forms, no services being offered or agreed to be performed, are not required to be licensed under said Collection Agency Act.

V. If Section 6853 of the Business and Professions Code be construed to require a person who sells or offers to sell Forms without offering, or agreeing to perform or performing any service whatsoever in connection therewith; said Forms collectively in a group, constituting a set plan of operation or procedures ("system"), or a systematic plan or program ("scheme"), or a method or project ("device") intended or calculated to be used by *bona fide* creditors to attempt to collect the debts owing unto them from their debtors to be licensed under the Collection Agency Act, would render said Section void and unconstitutional, as in contravention of the rights of Defendants under the First and Fourteenth Amendments to the Constitution of the United States, and Article I, Sections 1 and 9 of the California Constitution.

VI. That Plaintiff's cause or causes of action are not barred by the doctrine of *res judicata* nor does the doctrine of collateral estoppel apply against Plaintiff as to any facts or causes of action herein.

VII. Until further Order of Court, the Court retaining jurisdiction to amend, modify, or supplement the Injunction, the Defendants, and each of them, their agents, servants, employees, attorneys, successors and assigns, and all persons acting in concert therewith, and having knowledge, express or implied, of the Injunction, should be enjoined from, within the State of

California, doing or attempting to do, directly or indirectly, or by any manner or means whatsoever:

VII.1. Throughout the Injunction:

(i) The word "Person" shall designate and include: a natural Person; a Corporation; a Partnership; a Fictitious Trade Name business; a Trust; and any other type of business organization;

(ii) The word "Defendants" shall designate and include; The named Defendants, other than Maxine Pink, and each of them; and each of their agents, servants, employees, attorneys, successors, assigns, distributors, and all persons acting in concert therewith, or with any of the foregoing, and having knowledge, express or implied (CC 18 and 19), of the Injunction;

(iii) The masculine gender shall include the feminine and neuter; the singular includes the plural; the plural the singular;

(iv) The word "forms" shall designate and include: Any document designed and intended to be used in the collection of claims owed or due, or asserted to be owed or due, to the person, or his principal, to whom they are sold or supplied, or attempted to be sold or supplied, by Defendants.

VII.2. Soliciting any Person to purchase or be supplied with any Forms, sold and supplied by Defendants, and thereupon or thereafter sending to Defendants, or any other person, any names, addresses and amounts due and/or owing, or claimed to be due and/or owing, to such person (to whom the Forms are sold or supplied) for the Defendants, or any other person, to fill in or complete the Forms, (either with the amount of the claims or the creditor's name or address,

or address of the alleged debtor, or otherwise) and then inserting the completed Form in an envelope, sealing and mailing it; or any variation of the foregoing; and

VII.3 Selling or offering for sale, or soliciting any Person to purchase or be supplied with, any Forms which bear as a part thereof: The, or any, name or address of Defendants; or any Fictitious Name or Trade Name of or used by Defendants; or any other fictitious name or designation (for illustration, Exhibits 1-A, 1-B, 1-C, 2, 3, 4, 5, and 6-B); designed, or intended, to convey, or stating, or representing, or intended, to convey, or stating, or representing or intimating to the Debtor to whom said Form is to be sent, that a third person has been by the Creditor employed, or retained, or designated, or used to make demand for payment or to effectuate collection; and

VII.4 Selling or offering for sale, or soliciting any Person to purchase or be supplied with, any Forms, and furnishing or supplying, or offering to furnish and supply for the same charge or selling price, or for a fee, included or separate, or otherwise, any services whatsoever, therewith or pertaining thereto, other than as an employee of said Person; and

VII.5 Selling or offering for sale, or supplying or offering to supply:

(i) Exhibit 1, so long as there appears thereon the legend to the postmaster, after 5 days return to "748 Washington Building", being the address of Defendants; and

(ii) Exhibit 1-A, so long as there appears thereon the legend "Claimant's Information Questionnaire, 748 Washington Building", being a Fictitious Name or des-

ignation of Defendants, and their address and place of business; and

(iii) Exhibit 1-B, so long as there appears thereon the legend, "Change of Address, 748 Washington Building", being a Fictitious Name and designation of Defendants, and their office and address; and

(iv) Exhibit 1-C, so long as there exists thereon the legend, "Current Employment Records, 748 Washington Building", being a Fictitious Name and designation of Defendants, and their office and address; and

(v) Exhibit 2, so long as there appears thereon the legend "by Payment Demand" ("notice mailed from Washington, D.C. by Payment Demand"), being a Fictitious Name and designation of Defendants; and

(vi) Exhibit 3, so long as there appears thereon the legend "by Payment Demand" ("notice mailed from Washington, D.C. by Payment Demand"), being a Fictitious Name and designation of Defendants; and

(vii) Exhibit 4, so long as it contains the legend, "Payment Demand, 748 Washington Building", being a Fictitious Name and designation of Defendants, and their office and address; and

(viii) Exhibit 5, so long as it contains the legend, "Payment Demand, 748 Washington Building", being a Fictitious Name and designation of Defendants, and their office and address; and

(ix) Exhibit 8-C, so long as it contains and offers the services the subject of the Divisions thereof entitled "prepaid meter service", "meter service—pay as you go", and "5c postage stamp"; and

(x) Exhibit 6-A, so long as it contains the legend to return to "748 Washington Building", being the office and address of Defendants; and

(xi) Exhibit 6-B, so long as it contains the legend, "Current Employment Records, 748 Washington Building", being a Fictitious Name and designation of Defendants, and their office and address; and

(xii) Plaintiff's Exhibit 7, so long as it contains the legend, "748 Washington Building", being the office and address of Defendants; and

(xiii) Exhibit 8, so long as it offers the service and contains the legends and illustrations in paragraphs numbered 2, 3, 4 and 5; and

(xiv) Exhibit 21-A: Form "Jud-A", so long as it contains the legend "By Payment Demand" or "State of New York"; Form "Jud-B", so long as it contains the legend "By Payment Demand"; Form "IBM L-23349", so long as it contains the legend "Payment Demand, 748 Washington Building" and/or "State of Missouri"; Form "IBM L22916", so long as it contains the legend "By Payment Demand" Form "Jud-13", so long as it contains the legend "Payment Demand, 748 Washington Building"; Form "UDF-14", so long as it contains the legend "Payment Demand, 748 Washington Building"; Form "CD-16", so long as it contains the legend "Payment Demand, 748 Washington Building"; Form "CDF-17", so long as it contains the legend "Payment Demand, 748 Washington Building"; Form "NS-4", so long as it contains the legend "Payment Demand, 748 Washington Building"; and the Form "Notice" ("Interrogatory #17 (page 4.)"), so long as it contains the legend "748 Washington Building"; and

VII.6 Engaging directly or indirectly, and as a primary or secondary object, business or pursuit:

(i) In soliciting of claims for collection, unless and unil first licensed as a Collection Agency under the laws of the State of California; or

(ii) Of collecting or assisting others in the collection of claims owed or due or asserted to be owed or due to such others, unless and until first licensed as a Collection Agency under the laws of the State of California; or

(iii) Selling, offering for sale, supplying, or offering to supply, Forms containing as a part thereof a Fictitious Name, with the intention of conveying to the Debtor that a third person has been employed or retained to make demand for the payment or to effectuate collection thereof.

Nothing in this Injunction contained shall be construed or deemed to enjoin Defendants either or any thereof:

(i) From composing and publishing, or composing or publishing, or selling or offering for sale, or supplying or offering to supply, any Forms composed or designated and intended to be used by the purchaser, for the collection of debts and claims asserted by him to be due and owing to him from Debtors; notwithstanding that such Forms, collectively when used together as a set, or separately, constitute and are, or are by Defendants represented to be and deemed or believed by the purchaser thereof to be and constitute a set plan of operations and procedures ("system"), or a systematic plan or program ("scheme"), or a method or project ("device") for the attempted collection by

the purchase of said Forms, of the debts asserted by him to be due and owing from his Debtor; no services whatsoever being offered or agreed to be performed by Defendants in connection therewith or with reference thereto; (which Forms do not otherwise violate the Injunction nor any other applicable laws of the State of California (CC 3369; CC 3370; The Unfair Practices Act, Business and Professions Code Section 17000 to 17101; Business and Professions Code Section 17500; Business and Professions Code Section 17500.1; Penal Code Section 527)).

VIII. Until further Order of the Court, the Court retaining jurisdiction to amend, modify or supplement the Injunction, the Plaintiff, his agents, servants, employees and attorneys should be enjoined:

VIII.1 From taking or threatening to take any action against Defendants either or any thereof, or taking or threatening or advising any Person that such Person is subject to action or prosecution, criminal or civil, or Disciplinary Proceedings under the Collection Agency Act (Business and Professions Code, Chapter 8, Division 3) by reason only of the mere fact:

(i) As to Defendants either or any thereof: The composing and publishing, or selling or offering for sale, or supplying or offering to supply, any Forms; and

(ii) As to any other Persons: The purchasing or using of any Forms by reason of the mere fact that such Forms when used separately or collectively as a set, constitute, or are by Defendants represented to be, or are deemed or believed by the purchaser to be and constitute, a set plan of operation or procedure ("system"), or a systematic plan or program ("scheme"),

or a method or project ("device") for the attempted collection by the purchaser of the debts asserted by him to be due and owing from his Debtors; (which Forms do not otherwise violate the Injunction nor any of the other applicable laws of the State of California (CC 3369; CC 3370; The Unfair Practices Act (Business and Professions Code 17000 to 17101); Business and Professions Code Section 17500; 17500.1; Penal Code 527)).

IX. That Plaintiff take nothing by his Complaint as against the Defendant Maxine Pink.

X. That Maxine Pink have and recover of and from Plaintiff her costs and disbursements herein, hereby taxed in the sum of $.....

XI. Other than as herein expressly adjudged, neither party is entitled to any other or further relief as against the other.

XII. That Plaintiff and the Defendants, other than Maxine Pink, do bear their own costs and disbursements.

Dated this 16 day of October, 1964.

/s/ ALFRED GITELSON
Alfred Gitelson
Judge of the Superior Court

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APPENDIX "C."

Judgment After Court of Appeal Decision.

Superior Court of the State of California, for the County of Los Angeles.

Harold J. Powers, Director of the Department of Professional and Vocational Standards of the State of California, Plaintiff, v. Sydney N. Floersheim, aka S. Floersheim, and as S. N. Floersheim; Elaine A. Floersheim; Paul Pink; Maxine Pink; Herman Winters; and Ralph Schneider, Defendants. No. 826 756.

The Court of Appeal, Second Appellate District, having on November 21, 1967 filed its decision affirming in part and reversing in part the judgment entered herein on October 19, 1964; the Supreme Court of the State of California having on January 17, 1968 denied defendants'-appellants' Petition for Hearing; the Remittitur having been filed in this court on January 22, 1968, it is

ORDERED, ADJUDGED AND DECREED:

I. Any of the Conclusions of Law or portions thereof filed herein by this court on October 16, 1964, which are inconsistent with this judgment are hereby set aside and vacated.

II. The Judgment entered by this court on October 19, 1964 is hereby vacated and this Judgment After Decision of the Court of Appeal is entered in place thereof.

III. Plaintiff is authorized under section 6872 of the Business and Professions Code to institute action to enjoin persons from carrying on, or attempting to carry on, the business of a collection agency without

first having obtained a license pursuant to the Collection Agency Act (Business and Professions Code, division 3, chapter 8, sections 6850-6956.1).

IV. The selling and offering to sell the Forms herein involved, constitute a collection system, scheme, and device intended and calculated to be used to collect claims within the meaning of Business and Professions Code section 6853.

That defendants, other than the defendant Maxine Pink, being engaged in said business, to wit, the sale and offering to sell said Forms represented to be a collection system, scheme or device intended or calculated to be used to collect claims, are subject to the provisions of chapter 8, division 3, Collection Agency Act of the State of California, and are required to be licensed under said Collection Agency Act.

V. That unless and until defendants be licensed as a collection agency, pursuant to said Collection Agency Act, none of the defendants may sell or offer to sell said Forms or any other forms represented to be a collection system, scheme or device intended or calculated to be used to collect claims.

VI. That plaintiff's cause or causes of action are not barred by the doctrine of *res judicata* nor does the doctrine of collateral estoppel apply against plaintiff as to any facts or causes of action herein.

VII. Until further Order of court, the court retaining jurisdiction to amend, modify, or supplement the Injunction, the defendants, and each of them, their agents, servants, employees, attorneys, successors and assigns, and all persons acting in concert therewith, and having knowledge, express or implied, of the In-

junction, should be enjoined from, within the State of California, doing or attempting to do, directly or indirectly, or by any manner or means whatsoever:

VII.1 Throughout the Injunction:

(i) The word "Person" shall designate and include: a natural Person; a Corporation; a Partnership; a Fictitious Trade Name business; a Trust; and any other type of business organization;

(ii) The word "defendants" shall designate and include: The named Defendants, other than Maxine Pink, and each of them; and each of their agents, servants, employees, attorneys, successors, assigns, distributors, and all persons acting in concert therewith, or with any of the foregoing, and having knowledge, express or implied (CC 18 and 19), of the Injunction;

(iii) The masculine gender shall include the feminine and neuter; the singular includes the plural; the plural the singular;

(iv) The word "Forms" shall designate and include: any document designed and intended to be used in the collection of claims owed or asserted to be owed or due.

VII.2 Soliciting any person to purchase or be supplied with any Forms, sold and supplied by defendants, and thereupon or thereafter sending to Defendants, or any other person, any names, addresses and amounts due and/or owing, or claimed to be due and/or owing, to such person (to whom the Forms are sold or supplied) for the defendants, or any other person, to fill in or complete the Forms (either with the amount of the claims or the creditor's name or address, or address of the alleged debtor, or otherwise) and then inserting the completed Form in an envelope,

sealing and mailing it; or any variation of the foregoing; and

VII.3 Selling or offering for sale, or soliciting any person to purchase or be supplied with, any Forms which bear as a part thereof: The, or any, name or address of defendants; or any Fictitious Name or Trade Name of or used by defendants; or any other fictitious name or designation (for illustration, Exhibits 1-A, 1-B, 1-C, 2, 3, 4, 5, and 6-B); designed, or intended, to convey, or stating, or representing, or intimating to the debtor to whom said Form is to be sent, that a third person has been by the creditor employed, or retained, or designated, or used to make demand for payment or to effectuate collection; and

VII.4 Selling or offering for sale, or soliciting any person to purchase or be supplied with, any forms represented to be a collection system, scheme or device intended or calculated to be used to collect claims, notwithstanding the fact that such forms contain no fictitious name, trade name, or any other name of any kind, and notwithstanding the fact that no services are furnished or offered to be furnished by defendants in connection with said forms.

VII.5 Selling or offering for sale, or supplying or offering to supply:

(i) Exhibit 1
(ii) Exhibit 1-A
(iii) Exhibit 1-B
(iv) Exhibit 1-C
(v) Exhibit 2
(vi) Exhibit 3
(vii) Exhibit 4

(viii) Exhibit 5
(ix) Exhibit 8-C
(x) Exhibit 6-A
(xi) Exhibit 6-B
(xii) Exhibit 7
(xiii) Exhibit 8
(xiv) Exhibit 21-A

VII.6 Engaging directly or indirectly, and as a primary or secondary object, business or pursuit:

(i) In soliciting of claims for collection, unless and until first licensed as a collection agency under the laws of the State of California; or

(ii) Of collecting or assisting others in the collection of claims owed or due or asserted to be owed or due to such others, unless and until first licensed as a collection agency under the laws of the State of California; or

(iii) Selling, offering for sale, supplying, or offering to supply, Forms containing as a part thereof a Fictitious Name, with the intention of conveying to the debtor that a third person has been employed or retained to make demand for the payment or to effectuate collection thereof.

(iv) Selling or offering for sale, or soliciting any person to purchase or be supplied with, any forms represented to be a collection system, scheme or device intended or calculated to be used to collect claims, notwithstanding the fact that such forms contain no fictitious name, trade name, or any other name of any kind, and notwithstanding the fact that no services are furnished or offered to be furnished by defendants in connection with said forms.

VIII. That plaintiff take nothing by his complaint as against defendant Maxine Pink.

IX. That defendants take nothing by their counterclaim against plaintiff.

X. That Maxine Pink have and recover of and from plaintiff her costs and disbursements hereby taxed in the sum of $ ..... .

XI. Other than as herein expressly adjudged, neither party is entitled to any other or further relief as against the other.

XII. That plaintiff have and recover of and from defendants, except Maxine Pink, his costs and disbursements herein, hereby taxed in the sum of $.....

Dated this 4 day of March 1968.

/s/ ALFRED GITELSON
Alfred Gitelson
Judge of the Superior Court